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Chair of the Assembly of the Academic Senate Faculty Representative to the Regents University of California 1111 Franklin Street, 12th Floor Oakland, California 94607-5200

December 18, 2019

SUSAN CARLSON, VICE PROVOST ACADEMIC PERSONNEL

Re: Proposed Revised Presidential Policy on Copyright Ownership

Dear Susan,

Kum-Kum Bhavnani

Telephone: (510) 987-9303

Email:kum-kum.bhavnani@ucop.edu

As you requested, I distributed for systemwide Senate review the proposed revised Presidential Policy on Copyright Ownership. All ten Academic Senate divisions submitted comments. These comments were discussed at Academic Council's December 11, 2019 meeting and are attached for your reference.

The Academic Council appreciates UCOP's efforts to update, streamline, broaden, and clarify the language of the Policy. However, the Senate is unable to support the current version due to a number of significant concerns and points of confusion. We ask that the Policy be revised and clarified to address the specified concerns, and circulated for a second round of 60-day review.

We understand that the Policy establishes a framework for copyright ownership of copyrightable works created at UC. The cover letter notes that the revisions clarify and streamline language; expand the definition of academic authors eligible to own copyrights and the pool of works eligible for copyright ownership; create a definition for "Significant University Resources" as a limitation on the University's ownership; and clarify copyright ownership by graduate students of their theses, dissertations, and other copyrightable works.

There is significant concern and confusion about the Policy's attempt to clarify the "academic exception" to the "work made for hire" provisions in copyright law – that is, at a University, the faculty member -- not the institution employing them -- own the work they produce while employed at the University. While the revised Policy does not remove the default copyright ownership status for faculty members, it suggests this exception exists as a tradition, or a kind of "gentleman's (sic) agreement" between the University and faculty. A number of the reviewers object to this characterization, noting that the academic exception is not a right the University can grant, but a right that is central to academic freedom, and one that is also established in case law. We encourage clarity on this matter, and urge that the Policy include a clear statement validating the faculty's ownership over their copyright. We also found the thorough and extensive comments from UCI Professor of Law R. Anthony Reese, included with this packet, to be very helpful, and encourage you to consult them.

Several divisions also request a clearer definition about which funds and what level of funds fall under the "significant university resources" category that may prompt the University to retain copyright ownership. Specific examples and/or thresholds would be very helpful here.

Divisions noted, in addition, that the Policy and FAQs should clarify copyright provisions for student works, including copyright ownership for graduate students under contract. Clarification was also requested regarding the extent to which work produced under graduate students would be considered a deliverable of a sponsored research project, as well as examples of instances in which graduate students would not own copyright.

A good number of reviewers ask that the Policy broaden the scope of the meaning of "academic works" considered under the policy, to include a more comprehensive and nuanced set of examples of scholarly, aesthetic, and performance works that better account for difference across fields. Reviewers also sought clarification as to whether research data is covered -- as well as copyright -- in the context of online content. Finally, when the University contracts with third party vendors in the context of both online education and "sponsored" research (and other works), there was a request for greater clarity around the question of copyrights.

We note that the divisional comments include other suggestions for enhancing the clarity and readability of the policy, and we hope your office will feel able to address those suggestions.

Thank you for the opportunity to opine. We look forward to reviewing the next version of the policy. Please do not hesitate to contact me if you have additional questions.

Sincerely,

Kun Kun Bhawani .

Kum-Kum Bhavnani, Chair Academic Council

cc: Academic Council Senate Directors



UNIVERSITY OF CALIFORNIA

December 3, 2019

KUM-KUM BHAVNANI Chair, Academic Council

Subject: Comments on the Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum,

On November 4 and 18, 2019, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed Revised Presidential Policy on Copyright Ownership and was supportive of the revised policy. The Committee on Courses of Instruction (COCI), Graduate Council (GC), Committee on Research (COR), and the Library Committee (LIBR) reviewed and provided comments (see attached).

DIVCO suggests that a clearer definition of "significant university resources" is needed to determine when copyright will shift from instructor/student to the university. The determination could vary widely among instructors, and particularly for online courses, graduate students, and faculty who leave the campus. In addition, DIVCO discussed that the ownership of copyright for graduate students under contract is not well-defined in the proposed revised policy. There are different kinds of contracts and grants, and it is not always clear whether work produced under graduate students would be considered a deliverable.

DIVCO points out the FAQ document should be clearer, especially in the areas of students, student financial aid, and "Funds administered by, or under the control, responsibility, or authority of, the University" (page 3). DIVCO also recommends that the terms referring to graduate student "scholarly papers" be changed to "scholarly works" to cover a broader range of writings. Lastly, the inclusion of examples demonstrating when graduate students would *not* own copyright was highly recommended.

Thank you for the opportunity to comment. If you have any questions, please don't hesitate to contact me.

Sincerely,

Oliver O'M

Oliver O'Reilly Chair, Berkeley Division of the Academic Senate Professor of Mechanical Engineering

Enclosures

cc: Jennifer Johnson-Hanks, Vice Chair, Berkeley Division of the Academic Senate Jocelyn Surla Banaria, Executive Director, Berkeley Division of the Academic Senate Robert Ashmore, Chair, Committee on Courses of Instruction John Battles, Chair, Graduate Council John Colford, Chair, Committee on Research Charles Blanton, Chair, Library Committee Sumali Tuchrello, Senate Analyst, Committee on Courses of Instruction Sumei Quiggle, Associate Director & Senate Analyst, Graduate Council Deborah Dobin, Senate Analyst, Committee on Research



October 30, 2019

OLIVER O'REILLY Chair, Berkeley Division

RE: Proposed Revised Copyright Ownership Policy

Dear Oliver,

At its meeting on October 18, the Committee on Courses of Instruction (COCI) discussed the proposed revisions to the UC Copyright Ownership policy. While the domain of COCI's interest in this matter is articulated more deeply in the related <u>Ownership of Course Materials</u> policy (effective 09/25/03), there are elements in the Copyright Ownership Policy relevant to COCI's primary concern of course materials. The 2003 Course Materials policy defines course materials as those "...prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to, digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software." It is from this definition that COCI framed its comments.

In the process of preparing course materials, UC instructors (from ladder rank faculty to graduate student instructors) will have reason to prepare and record materials for online courses. This may include, but is not limited to, digital recording of lectures, creating slide decks, creating discussion prompts for online chat discussions. All of these are understood to reasonably fall under the course materials definition provided above as owned first by the authoring instructor and secondly by rights that UC retains to academic materials generated for UC.

The first question raised by COCI relates to materials for online courses. It seemed somewhat unclear what portion of such materials would fall under the category of "scholarly and aesthetic works" over which an instructor would retain copyright ownership. When an instructor creates a visual recording of their own lecture, does the instructor remain the copyright owner of the resulting digital image? The language of the established and revised policy seems to imply that the instructor should be the copyright owner, but members report having been restricted from freely using materials generated via CourseCapture (and similar UC licensed products) as they would been able to do if they had recorded the lecture on their own. Another scenario where copyright ownership strikes COCI members as potentially unclear would be one where an instructor creates an online course, within the scope of their academic obligations, that proves successful and generates substantial student enrollments. What would be the situation in regard to copyright over such material in the event that instructor subsequently leaves for another institution, and wishes to continue to use these materials at their new institution? Members were not aware of a case where UC has taken legal action against a separated instructor for using materials that they have copyright access to, but given the dual ownership of

course materials (between the instructor and the UC) that the policy allows for, it seems conceivable that financial interests might ultimately outweigh the academic tradition that the Copyright Ownership policy is built upon.

A second question, which would also likely apply largely to materials developed for online courses, relates to the language in the policy about the expenditure of "Significant University Resources" in producing course materials. In trying to find the line between "mine and thine" for online courses, members wonder if an online course they create would be considered their own if for example the lectures are produced using UC-owned cameras and technical support operating the cameras, or if the course syllabus, reading list, and lectures notes are all posted to and accessed by students via UC educational software (e.g., bCourses, Canvas, or similar licensed platforms). Would such online course materials potentially be construed as "Sponsored Works," "Commissioned Works," or "Contracted Facilities Works," since such a course will have been created and implemented with substantial investment of UC resources? Or would the more traditional academic approach apply, whereby they would remain first and foremost the copyright of the instructor?

COCI presents these questions as fodder for further discussion on the revised Copyright Ownership policy. We hope that copyright policy for seemingly ambiguous cases such as those outlined above, particularly in relation to online course materials, will be rendered clear and explicit before this updated copyright policy is finalized.

Sincerely,

noprof Chan

Robert Ashmore, Chair Committee on Courses of Instruction

RA/st



October 30, 2019

OLIVER O'REILLY Chair, Berkeley Division

Re: Proposed revised Presidential Policy on Copyright Ownership

Dear Chair O'Reilly,

At its meeting on October 7, the Graduate Council (GC) reviewed the proposal to revise the Presidential Policy on Copyright Ownership. The proposed revision intends to make clear that graduate students own the copyright to their dissertations, except when they are funded by or a deliverable on a contract or grant. However, there are many different kinds of contracts and grants, and it is not always clear whether work produced under them would be considered a deliverable.

Members suggested that the FAQ be made clearer about how the policy affects graduate students, in particular "Funds administered by, or under the control, responsibility, or authority of, the University," "Significant University Resources," and student financial aid. Listing some examples in the FAQ would help clarify the intent of the policy.

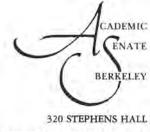
Our members also pointed out that in the FAQ, the list of kinds of works eligible for copyright ownership does not specify dissertations and theses. Changing the term "scholarly papers" to "scholarly works" would cover those.

Sincerely,

John & Battles

John J. Battles Chair, Graduate Council

JBB/scq



UNIVERSITY OF CALIFORNIA

October 30, 2019

PROFESSOR OLIVER O'REILLY Chair, Berkeley Division of the Academic Senate

> *Re: COR comments on revisions to the Presidential Policy on Copyright Ownership*

Dear Chair O'Reilly:

At its October 23rd meeting, COR briefly discussed the proposed revisions to the Presidential Policy on Copyright Ownership. Overall, the committee supported and endorsed the revisions. Members thought that it would be helpful if a few areas could be clarified, including how copyright is handled if research projects are in collaboration with another (non-UC) university. Adding something to the FAQs about this and about how the UC policy compares with policies at other universities was suggested.

A concern was raised about the language regarding students and copyright; there may be a discrepancy between this policy and the policy regarding intellectual property, especially for undergraduate students. Members also thought it would also be helpful to clarify guidance on situations where a student is working with a PI in a lab and is getting paid, with and without work-study funding. It might be helpful to add some examples, demonstrating various scenarios, to the FAQs.

Thank you for asking COR to comment on this policy.

With best regards,

An M. Coford. Cf

John Colford, Chair Committee on Research

Senate Library Committee Comment to DIVCO: Proposed Revision of System-Wide Copyright Policy

14 November 2019

At the Division Chair's request, Berkeley's Library Committee has considered the proposed revision of the University's policy on copyright ownership. Perhaps unfortunately, the committee is not well populated with experts on copyright, and we await the (better-credentialed, no doubt) analysis currently being undertaken by the Library's experts on scholarly communication. Our own analysis generated no grave reservations, but it did produce a number of queries, touching on aspects of the proposed revision that seem either implicit or merely obscure, and a couple of recommendations, summarized below. Clarification of some of these vaguenesses would produce a much stronger policy statement than that offered here.

I. Policy Summary

--It is our assumption that the revision primarily seeks to bring the University's policy into conformity with existing United States copyright law, as suggested in §1, which makes obvious sense. Less clear is the policy's limit where other copyright regimes may apply. While it seems that US law would presumptively apply to university employees, it is not so self-evidently the case that all publications by those employees would remain subject to US (as opposed to UK, EU, etc.) law exclusively. This is a question that has arisen elsewhere (in the matters of Open Access policies for faculty publications and, more urgently, graduate dissertations), but has never been acknowledged or addressed.

--As we read it, the policy creates an incongruity, though perhaps not a pure contradiction, with the current system-wide policy on Open Access. There, academic employees are required to provide a license to the University. Here, the power to provide that license turns out to have been predicated on the University's own prior assignment of the copyright claim. We seem to have two policies that have the cumulative effect, at least in some cases, of locking the system into circularity.

II. Definitions

--The enumeration of 'Scholarly & Aesthetic Works' covered under the policy in §2 is not entirely reassuring, though perhaps legally required. Since these claims are to be disclaimed, it perhaps does not matter much, but the maximal claim on poems and music and architectural drawings seems a little absurd, even when forsworn.

Elsewhere, members of the committee were unsure (in the example of software, for example) whether this represented, in the aggregate, an explansion of current understandings.

--The definition offered of 'Significant University Resources' seems far more problematic. Here, we would strongly urge clarification.

Notwithstanding the largely unhelpful phrase 'similarly-situated', a straightforward reading of this provision would suggest that certain faculty members *would in fact* be left subject to the claim disclaimed immediately above. Common sense would suggest that holders of endowed chairs, for example, or faculty provided with tailored start-up or retention arrangements would be in receipt of 'Significant University Resources' under this definition. All of which would then create the suggestion that the university stands to reserve its claim on the work of those faculty, quite regardless of other provisions.

Indeed, the same logic would seem to apply more broadly at other levels as well. Graduate students being funding by university fellowships, for example, are underwritten by significant university resources not made available even to their 'similarly-situated' peers.

III. Policy Text

--As usual, the obviously necessary consideration of 'sponsored works' is not matched by any comparable attention to other common situations of multiple copyright claims--by presses, journals, etc. (reduced here to 'other third parties'?) One presumes that the policy applies only to the authorial share of such protections. As a practical matter, university presses, for example, are not in the habit of disbursing royalties to the University, so one wonders at the standing of the claim.

--As a practical matter, we would recommend some greater clarification of the provision for union employees. One presumes that this was originally imagined in the contexts of, say, lecturers and librarians. But theoretically, it might then also apply to Graduate Student Instructors (depending on any given contract negotiation). Perhaps more pervasively, it might be expected to apply soon enough to Graduate Student Researchers, currently discussing the possibility of formal organization. How exactly are these potentially overlapping claims to be sorted, should they arise?

All of this distills a general sense of the committee. Our strongest recommendations, then:

1. Clarification of the 'significant university resources provision'. This seems urgent.

2. Clarification of the implications of the provision for union employees. This seems prospectively important.

3. Clarification of the relation to existing policy on Open Access. This seems prudent.

Respectfully submitted, C. D. Blanton, for the committee



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DAVIS DIVISION OF THE ACADEMIC SENATE ONE SHIELDS AVENUE DAVIS, CALIFORNIA 95616-8502 (530) 752-2220 academicsenate.ucdavis.edu

December 3, 2019

Kum-Kum Bhavnani

Chair, Academic Council

RE: Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum:

The proposed revised Presidential Policy on Copyright Ownership was forwarded to all standing committees of the Davis Division of the Academic Senate. Nine committees responded: Academic Freedom and Responsibility (CAFR), Faculty Welfare, Graduate Council, Library, Research (COR), and the Faculty Executive Committees of the College of Biological Sciences (CBS), the College of Letters and Science (L&S), the School of Medicine (SOM), and the School of Nursing (SON).

Overall, committees support the revisions but noted items that require clarification.

Several committees recommend specifying further which funds fall into the "significant university resources" category. CAFR and the Library Committee wonder if competitive internal campus grants (e.g., travel and research grants administered by local Senate divisions) are included. Likewise, COR notes that it is unclear if university material produced by university fellowships (e.g., Hellman or Chancellor's Fellowships) or by graduate students enrolled in research units fall into this category.

Committees pinpointed additional items to clarify:

- CAFR recommends clarifying what kind of review is required before a faculty member distributes software as part of the publication process or for general public discourse.
- Academic supervision is not mentioned in section III.A.3, Student Works, but is covered in section III.B, Copyright Ownership of Jointly Created Works. Graduate Council suggests that "inclusion of an explicit reference to section III.B within section III.A.3 may avoid confusion," such as adding the following language at the end of section III.A.3: "or (5) was jointly created involving University personnel (see Section III.B below on how such cases are handled)."
- COR notes that in Section III.A.3, the "line between 'Independent Academic Effort' and 'work created primarily in the course or scope of the student's University employment' could be hard to discern."
- Graduate Council notes that it is unclear if Section III.E, Union Employees, applies to graduate students.

- The Library Committee recommends that the policy clarify "whether research data is within its scope, and if so, how it relates to APM-020. Research data is sometimes copyrightable and is a research product like a scholarly article, yet the policy is silent about its ownership."
- COR wonders if the policy will allow "employees and students to claim independent copyrights to parts of the work."
- COR recommends tighter definitions for "general obligation" and "Scholarly & Aesthetic Works" since "many academic employees perform work that could be considered teaching or research, but not in the same sense as faculty."
- There are cases when academic authors perform additional compensated work for the university outside of standard teaching loads (e.g., extra instructional videos). Written agreements might not always be created in these cases. Thus, in Section III.A.5, Commissioned Works, COR recommends adding, "If the work is done by an Academic Author, then generally that author will also retain a free-of-cost, nonexclusive worldwide license to the commissioned work."
- If lecture PowerPoints and notes are copyrighted, CBS recommends clarifying what this means for "successful transfer of course materials to the person teaching the course next."
- SON recommends "more elaboration in terms of copyright and online content—specifically, what would be considered intellectual property and how faculty can discern what is 'allowed' in terms of reusing materials in online courses."

The Davis Division appreciates the opportunity to comment.

Sincerely,

Kistin H. Lagettuta

Kristin H. Lagattuta, Ph.D. Chair, Davis Division of the Academic Senate Professor, Department of Psychology and Center for Mind and Brain

Enclosed: Davis Division Committee Responses

c: Hilary Baxter, Executive Director, Systemwide Academic Senate Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate CAFR response to the "Proposed Draft of the Revised Presidential Policy on Copyright Ownership."

Committee members reviewed the document and it was the focus of our meeting on 11/5/2019. Our discussion has produced several questions/requests for clarifications/etc:

- As part of our review of the new proposed policy, we became aware of the Office of Research's <u>guide</u> on "Distributing UC Davis's Copyright-Protected Work." This raises additional questions that relate to academic freedom, in particular the apparent need for administrative review and approval before distributing software as part of the review and publication process.¹ We think it would be useful to have clarification about what kind of review is required before a faculty member distributes software as part of the publication process. What about for general public discourse?
- Many faculty members receive funding from the small grant program (research travel grants and/or small grants-in-aid-of research, both administered by the Academic Senate). Does the use of these funds constitute "significant university resources"? What about other funding sources on campus for teaching and research?

¹ For example: "Plans for distribution of copyright-protected works which belong in whole or in part to the Regents, or for which UC Davis resources, funds or facilities (such as computers, but not including libraries) have been/will be used, must be approved by Technology Transfer Services. . .". And, "... the University's <u>Principles Regarding</u> <u>Rights to Future Research Results in University Agreement with External Parties</u> requires that distributions of externally-funded research results, including software, meet eight specific principles. Distributions which don't meet the principles will not be approved, so be clear in your Proposal about the goals."

November 8, 2019

TO: Academic Chair Lagattuta

RE: Proposed Revised Presidential Policy on Copyright Ownership

The Academic Planning and Development subcommittee (APD) of Graduate Council (GC) discussed the Proposed Revised Presidential Policy on Copyright Ownership. Overall, no major concerns were raised and the document was largely deemed to be clear and helpful. There were, however, some suggestions for clarification.

First, it was noted that under the section "Student Works" (Section III A3) in which copyrights of students are discussed, academic supervision is not mentioned. Given that thesis advisor(s) may contribute significantly to the content of the thesis, it was not immediately clear from this section alone how significant supervision influences copyright ownership. There is a separate section called "Jointly Created Works" (Section III.B) that address this issue. The inclusion of an explicit reference to Section III.B within Section III A3 may avoid confusion (e.g., consider adding "or (5) was jointly created involving University personnel (see Section III. B below on how such cases are handled" at the end of Section III.A3).

Second, it was not clear whether the content of the section "Union Employees" (Section III.E) applies to graduate students. It would be helpful if this was made explicit.

Library Committee Response to the Proposed Revised Presidential Policy on Copyright Ownership

The Library Committee would like the policy to clarify that "significant University resources" does not include competitive internal grants.

The Library Committee would like the policy to clarify whether research data is within its scope, and if so, how it relates to APM-020. Research data is sometimes copyrightable and is a research product like a scholarly article, yet the policy is silent about its ownership.

November 15, 2019

Committee on Research

Response to Request for Consultation: Proposed Revised Presidential Policy on Copyright Ownership

The Committee on Research has reviewed and discussed the Proposed Revised Presidential Policy on Copyright Ownership and has the following comments:

- Current general practice is that the faculty member signs off on transfer of copyright upon publication on behalf of a group of authors (students, fellows, employees). Will this document allow employees and students to claim independent copyrights to parts of the work?
- "Significant university resources" is unclear, for instance in the following situations:
 - 1) Does definition include University fellowships such as the Hellman or Chancellor's Fellowship, which might be used to produce copyrightable materials?
 - 2) If a graduate student is enrolled for research units, are they considered to be using Significant university resources?
- "General obligation" is undefined and it's unclear if it includes assignments within the general scope of an employee's work, e.g. creating web pages or writing reports. Compounding the problem, "Scholarly & Aesthetic Works" are defined as those created in connection with teaching, research, or scholarship, but those activities are also undefined. Many academic employees perform work that could be considered teaching or research, but not in the same sense as faculty. These terms would benefit from tighter definitions.
- <u>5. Commissioned Works</u>

There is concern that when the University commissions work to be done by an Academic Author (e.g., creation of an instructional video done for extra compensations and not as part of the normal teaching load) there might not be a written agreement even though this document says there must be. Adding the language, "If the work is done by an Academic Author, then generally that author will also retain a free-of-cost, nonexclusive worldwide license to the commissioned work." provides a backstop in these cases, and provides guidance when a written agreement is created.

• <u>3. Student Works</u>

Is it sufficiently clear how GSR's and others who are technically employed e.g. in labs can retain copyright for dissertation work? The line between "Independent Academic Effort" and "work created primarily in the course or scope of the student's University employment" could be hard to discern.

Proposed Revised Presidential Policy on Copyright Ownership

FEC: College of Biological Sciences Committee Response

November 15, 2019

The CBS FEC discussed the proposed modifications to the Presidential Policy on Copyright Ownership. Generally these were thought to be favorable to the faculty. Some concern was raised about whether class materials like lecture powerpoint were copyrighted, and what this would mean for successful transfer of course materials to the person teaching the course next.

Proposed Revised Presidential Policy on Copyright Ownership

FEC: School of Nursing Committee Response

November 15, 2019

We appreciate the opportunity to respond. Our FEC members briefly discussed the proposed copyright ownership policy at our 11/7/19 meeting and followed with individual review and input, summarized below:

General

- We don't see any major concerns with the revised policy. The FAQ section is very helpful.
- Copyright issues are always complex. The complex nature and variability of different circumstances will likely mean that individuals will need to consult with the Copyright office. We recommend this be clearly articulated in the policy.

Online materials

- Interpretation: the tangible medium of expression will cover items created in the online environment. This has been an area of challenge for universities moving to the online platform.
- We recommend a bit more elaboration in terms of copyright and online content specifically, what would be considered intellectual property and how faculty can discern what is 'allowed' in terms of reusing materials in online courses.
- We recommend an additional FAQ section with some examples of scenarios in which one might think there was not an issue, but on closer examination there actually was. For example, would content created for an online course that was then modified slightly by the creator not using any university resource and sold by the creator outside the university be considered an infringement or acceptable under the copyright policy provisions?

Books

• For faculty who are writing books on their own time and without using any university resources, does this policy allow for full copyright protection for the author and full royalties dispersal to the author, or is the university requiring all or a portion of the proceeds to go to the university coffers? If the latter, who gets the funding? The department? or the University at large? Example: A medical school faculty member is writing a fiction novel for publication...what happens with copyright and royalties/funds received from the sale of the publication?

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SCHOOLOF MEDICINE FACULTY EXECUTIVE COMMITTEE

November 15, 2019

KRISTIN LAGATTUTA CHAIR, DAVIS DIVISION OF THE ACADEMIC SENATE

RE: Proposed Revised Presidential Policy on Copyright Ownership

The Faculty Executive Committee (FEC) at the School of Medicine discussed the proposed name change reviewed the proposed Revised Presidential Policy on Copyright Ownership and has no concerns. FEC supports the proposal.

Sincerely,

Tall

Andrés F. Sciolla, M.D. Chair, Faculty Executive Committee UC Davis School of Medicine



Academic Senate Council on Research, Computing & Libraries 307 Aldrich Hall Irvine, CA 92697-1325 (949) 824-7685 www.senate.uci.edu

December 3, 2019

JIM STEINTRAGER, CHAIR ACADEMIC SENATE, IRVINE DIVISION

RE: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

At its November 21, 2019 meeting, the Council on Research, Computing, and Libraries (CORCL) discussed the revised presidential policy on copyright ownership.

The proposed modifications to the Presidential Policy on Copyright Ownership reduce areas of ambiguity and streamline the language. The key provision is Section III.A.1 whereby the University transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort.

With respect to the 1992 Presidential Policy on Copyright Ownership, the policy expands and clarifies the eligibility to own copyrights to the newly defined category of "Academic Authors", the pool of works eligible for copyright ownership, "Significant University Resources" as a limitation on the University's ownership, copyright ownership for graduate students and represented employees, supplemental information, and deletes numerous unnecessary provisions. A set of Frequently Asked Questions (FAQs) has been developed to accompany the policy.

Overall the Council found the proposed revisions to be reasonable. CORCL shares the concerns about ambiguity and inconsistent wording that have been raised by Graduate Council and UCI Law Professor Anthony Reese.

Additional recommendations are reported below:

- 1. In Section II (Definitions), Independent Academic Effort means inquiry, investigation, or research carried out to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the Academic Author without direct assignment or supervision by the University. The term "supervision" here may not clearly include "sponsored works", i.e. works that are created by or through the University in the direct performance of a written agreement between the University and a Sponsor.
- 2. In Section III.3, it is written that "Absent unusual circumstances, copyright ownership of theses or dissertations authored by University students resides with such students." The term "absent unusual circumstances" is ambiguous. If the "unusual circumstances" directly refer to the cases indicated in the preceding paragraph, this should be explicitly clarified. The nature and scope of the "unusual circumstances" should be clarified.

In the FAQ, in the answer to the question "When does UC keep copyright in Scholarly & Aesthetic Works?," it is stated that "UC generally retains copyright in a Scholarly & Aesthetic Work if [...] (c) UC provided significant financial support for the work". The Council recommends substituting "significant financial support" with "Significant University Resources."

The Council appreciates the opportunity to comment.

LIGHT

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0 W On behalf of the Council,

Jee Bardwell

Lee Bardwell, Chair

c: Kate Brigman, Executive Director Michelle Chen, CORCL Analyst



October 15, 2019

JAMES STEINTRAGER, CHAIR ACADEMIC SENATE, IRVINE DIVISION

RE: Revised Presidential Policy on Copyright Ownership

At its October 10, 2019 meeting, Graduate Council reviewed the Revised Presidential Policy on Copyright Ownership. The proposed modifications aim to reduce areas of ambiguity and streamline the language.

The Council has general concerns about the lack of clarity of some provisions and FAQ answers. The Council notes the frequent use of vague modifiers such as "generally" or "general obligation" or "likely" would or would not be copyrightable. Whenever possible, it would be helpful to use more specific criteria.

Graduate Council seeks clarifications on student works.

Section III.A.3 Student Works

"As between the University and its students, copyright ownership of works prepared by registered students (including registered graduate students) resides with such students, unless the work: (1) was created primarily in the course or scope of the student's University employment; (2) involved the use of Significant University Resources; (3) is a Sponsored Work, Contracted Facilities Work, or Commissioned Work; or (4) was created under a separate agreement that specifies a different copyright owner. For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstance, copyright ownership of theses or dissertations authored by registered students of the University resides with such students."

It is unclear whether graduate students are paid in forms other than financial aid for teaching or research work that could lead to the production of copyrightable works. If they are, there is some concern that under this Policy, they do not own the copyright in writings and works that they create in this situation. More specifically, the Council inquires how work produced by Arts students for example could be used for marketing purposes by the University. The Council understands that there is a marketing clause for Arts faculty.

In sum, Graduate Council supports that copyright ownership prepared by registered students resides with the students as much as possible.



The Council strongly endorses the attached comments from Professor Reese, Chancellor's Professor of Law and an internationally acknowledged expert in copyright law and policy, and urges the Administration to take his concerns into account.

The Council appreciates the opportunity to comment.

On behalf of the Graduate Council,

Zinda Cohen

Linda Cohen, Vice Chair

Attachment: 10/8/19 Email from R. Anthony Reese, Chancellor's Professor of Law to Kenneth Simons, Professor of Law

c: Kate Brigman, Executive Director, Academic Senate Carroll Seron, Graduate Council Chair Thao Nguyen, Graduate Council Analyst 10/8/19 Email from R. Anthony Reese, Chancellor's Professor of Law to Kenneth Simons, Professor of Law

By way of background, the policy is operating within the provision of U.S. copyright law that dictate in whom the ownership of copyright in a work initially vests when the work is created. Copyright now arises automatically in any qualifying work of authorship as soon as the work is created, and the statute specifies in whom that copyright vest when it comes into existence. As a general rule, ownership of the copyright in a work automatically vests in the author of the work (or, if the work is a joint work (as defined in the statute), then ownership vests jointly in all of the work's authors). There are, however, special rules when a work is created in the context of a hiring relationship. The most important rule here is that if a work is prepared by an employee within the scope of his employment, then the work is what the copyright law calls a "work made for hire" and copyright law considers the *employer* to be the author of the works made for hire, and there is enormous uncertainty of whether that "academic exception" survives under the current statute. It is against that background that the policy is trying to clarify ownership of copyright in works created within the University's operations.

And I think in general, for the issues that most Senate faculty are likely to be concerned about, the policy is quite reasonable and within faculty expectations; the key provision here is Section III.A.1 (and the associated definitions), which basically mean that most faculty own the copyright in their academic and aesthetic works, even if the courts ultimately hold that those works are "made for hire" and therefore the copyrights are initially owned by the University under the statute. I should note that I can't really speak to the provisions on Sponsored Works, since I haven't been involved in any grant-funded research, etc. and am not familiar enough with how that currently works to have a sense of whether this policy would change anything and if so whether that change would or would not be desirable from the perspective of Senate faculty.

I do have a number of concerns of varying degrees that might be worth considering, and I'll set them out here.

In General.

1. The policy is often ambiguous as to whether it is stating that initial ownership of a work's copyright vests, under US copyright law, in the University, or whether it is stating policies that require that the copyright in a work be transferred to the University (even though under the law the ownership of that copyright will vest initially in someone else). It would be desirable for the policy to be more clear, because if a transfer is required, then copyright law provides that such a transfer is valid only if there is a writing memorializing the transfer that is signed by the owner of the rights being transferred. Thus, making clear when the policy contemplates a transfer will help make clear when a separate writing will be necessary to carry out the policy. (For example, when the policy states in Sections III.A.6 and III.A.7(2) that the University "owns" the copyright in the works described in those sections, it is not at all clear under the current copyright statute that initial ownership of the copyright would vest

in the University, so I think a writing would be necessary to have a valid transfer that would effectuate those sections of the policy.)

2. The policy is inconsistent in how it describes copyright ownership in the various categories identified in Section III.A. In Sections III.A.2-5, the policy talks about ownership "residing" with the employee or the student, or the University. But in Sections III.A.1, 6, and 7, the policy says that the University "owns" the copyright or copyrights. It is unclear whether any different meaning is intended by this different phrasing. If not, I think it would be desirable to specify in subsections 2 through 5 that the employee or student or University "owns" the copyright.

3. The policy sometimes talks about works being "prepared" (see, e.g., Section III.A.1, III.A.2 (first sentence), Section III.A.3 (line 2), Section III.A.7 (subpart (1))), and at other times talks about works being "created" (see e.g., Section III.A.2 (second sentence), Section III.A.3 (subparts (1) and (3)), Section III.A.5 (the "*creation* of a work"), Section III.A.7 (subpart (2). (The policy also sometimes uses the verb "authored" (see e.g., Section III.A.3 (last sentence).) It isn't clear whether this differences are intentional and if so what they mean. (The policy does not seem to merely be tracking the statute and using "prepared" only when talking about employee works, because in Section III.A.3 on Student Works it talks generally about works "prepared by University students" and that use is clearly referring even to works created by students who are not employed by the University.) I think greater consistency in these terms would be desirable.

Specific Provisions.

<u>Section III.A.2.</u> The basic rule of current copyright law is that, for works created by an employee that are not "prepared . . . within the scope of his or her employment," the copyright in the work is owned by the employee, not the employer. (For example, if you take a photograph while sightseeing on a vacation, even though you are an employee of the University, the taking of the photograph would not be within the scope of your employment, and therefore ownership of the copyright in the photograph would vest in you and not in the University.) I think the basic point of this paragraph is to state and qualify that proposition. But I think there are some problems.

For one thing, the first sentence says that if a work is created outside the scope of employment, copyright resides with the employee IF the work was "prepared . . . without the use of University Resources." As an initial matter, I'm not sure why this is merely "University Resources" and not "Significant University Resources." For example, if I borrow from the University Library a copy of Stephen Fry's *The Ode Less Travelled* or John Hollander's *Rhyme's Reason* and use the book to teach myself (in my off hours) how to write sonnets, I think I have technically used University Resources in writing the sonnets, even though writing the sonnets is clearly not within the scope of my employment. I don't think the University means to claim copyright in those sonnets, but the policy's use of "University Resources" in this section could be read to say that the sonnets are not "Personal Works." In addition, as long as a work prepared by an employee is not "within the scope of his or her employment," the use of University Resources would not seem to be enough, under copyright

law, to cause ownership of copyright in the work to vest in the University rather than in the employee. So it is unclear whether the policy means that for a work prepared outside the scope of an employee's employment but using University Resources, the University expects the employee to transfer copyright in the work to the University.

Second, I see a couple possible problems in the second sentence of the paragraph. First, the statement in the second sentence that a work created through non-University consulting activities "*may be considered* a Personal Work" seems a bit ambiguous, especially since there is no indication here or elsewhere in the policy of who is going to make that determination. If the policy is that works that meet the criteria *are* Personal Works, then the policy should say so; if more is necessary, the policy should explain what further is necessary. Second, one of the criteria listed doesn't seem applicable. The policy says that works created through outside consulting may be Personal "so long as such non-University consulting activities do not interfere with the Employee's regular University duties." Again, though, as long as the work was not prepared "within the scope of [the employee's] employment," then it doesn't matter under copyright law whether it was prepared during activities that interfered with the person's employment duties; the work would not be "made for hire" and the copyright would vest in the employee, not the employer.

<u>Policy Section III.A.3.</u> The first of the four subsections of this paragraph doesn't clearly specify that the student is in fact an employee of the University (which, under copyright law, would have to be the case in order for the University to automatically be the copyright owner) and it also does not track the statutory language that determines when ownership of the copyright in an employee's work vests automatically in the employer (when the work is "prepared by an employee within the scope of his or her employment"). Perhaps this could be revised to read "(1) was created in the student's capacity as a University employee and within the scope of the student's employment."

<u>Policy Sections III.A.4-5.</u> I think the language in both these sections about licensing would be clearer (and more consistent with Section III.C) if it read: "the University generally requires *that the University be granted* a free-of-cost, nonexclusive, worldwide license to *use* such works . . ." (I would suggest the addition of "use" in Section III.C as well.

<u>Policy Section III.B.</u> I think this would be clearer if it read: "Copyright ownership *interests in* jointly created works involving University personnel will be determined by assessing the Category of Works and resulting ownership rights pursuant to Section III.A., above, *for each person who qualifies as a co-author of the works.*" Jointly created works can be quite complicated. Take, for example, an academic article where the contributors include a University professor (an "Academic Author"), a University graduate student, a University employee who is not an "Academic Author," and a professor and a graduate student at another University. If all five of those contributors are co-authors, then each of their ownership interests will need to be assessed to determine who owns that particular co-author's copyright interest (and in fact the professor and the student might own their shares pursuant to Sections III.A.1 and III.A.3, while the University rules won't even apply to determining ownership of the professor and student from a non-UC institution). Thus, I think it is perhaps misleading,

and certainly an oversimplification, to say that "Copyright ownership . . . will be determined," as the current draft does.

<u>Policy Section III.C.</u> I think it would be desirable to start this paragraph with the phrase, "Where the University owns the copyright in a work pursuant to Section III.A above and has not transferred those rights pursuant to that section, . . ." It should be clear that the University only has the power to "release" its rights (and to impose conditions on the release of those rights), where the University owns the copyright and has not already transferred it to an Academic Author under Section III.A.1.

<u>Policy Section III.D.</u> To the extent that this provision contemplates royalty sharing with those (employees, students, etc.) who created works that the University is exploiting commercially, it appears entirely permissive as to whether royalty income will be shared and in what proportions. Section IV.A allows Chancellors to promulgate local policies regarding distribution of royalty income, and the Senate might want to urge our Chancellor to promulgate such a policy rather than leaving the questions regarding royalty sharing to ad hoc decision making.

<u>FAQ.</u> While the material says the FAQ isn't the policy and that it can't replace the policy language, I think it is worth noting one inconsistency. On the top of page 3 of the FAQ (p. 8 of 27 of the packet), it says that use of "Funds administered by, or under the control, responsibility, or authority of, the University" will "likely be deemed to constitute 'Significant University Resources." Note, though that policy defines such funds as merely "University Resources" (part (2) of that definition), and the definition of "Significant University Resources" requires "University Resources *beyond the usual support provided by the University*." So while the FAQ says mere use of those funds is likely to be "Significant University Resources," that doesn't appear to comport with the policy's definitions.

UCLA Academic Senate

December 3, 2019

Kum-Kum Bhavnani Chair, UC Academic Senate

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum,

Thank you for providing the UCLA Academic Senate with the opportunity to comment on the proposed draft of the revised Presidential Policy on Copyright Ownership. The proposed policy was distributed to Academic Senate committees for comment, and was discussed at the November 21, 2019, meeting of the Executive Board.

Executive Board members were generally supportive of the changes, agreeing that a revision was in order. They appreciated the broadening of the language in many parts of the policy. However, the Executive Board thinks that there are aspects of the proposal that need to be clarified and emended. First, Members encourage clarification on the definition of work, which at times appeared both narrow in scope and focused on traditional forms of work. For example, some committees request broadening categories of faculty work to be more inclusive of formats such as blogs and vlogs as well as course material developed for online courses. Although artistic production is mentioned in general plays and some forms of musical performances are left out. We would appreciate wider range of "academic works" to be considered under the policy.

Second, the policy lacks clarity on the role of third-party vendors in the context of both online education and sponsored research. Given the increasing use of learning management programs, questions of copyright arise when material is posted to a third-party platform. Consequently, we would appreciate greater clarity around the question of copyrights when the University contracts with third party vendors. Indeed, it would be useful to more fully elaborate the protections granted to items such as quizzes, tests, syllabi, etc. in both face to face and online settings.

Third, members indicated that there is no clear definition of "significant University resources." This lack of clarity struck Senate members as particularly problematic. For example, would a research grant from the Academic Senate constitute a "significant University resource" since it is competitively distributed on many campuses? Members worry that in attempting to address one issue, online education, the policy may unintentionally drag in other types of support.

Finally, the proposed revision would benefit from a clear definition of the responsible party (the University or the individual faculty member) for pursuing copyright violations. Members believed that the University should devote resources to ensure that violations were prevented or stopped.

Sincerely,

Much 20

Michael Meranze Chair, UCLA Academic Senate

Enclosures: UCLA Academic Senate Committee Responses

Cc: Shane White, Vice Chair/Chair Elect, UCLA Academic Senate Joseph Bristow, Immediate Past Chair, UCLA Academic Senate April de Stefano, Executive Director, UCLA Academic Senate

UCLA Academic Senate Committee on Continuing & Community Education

November 27, 2019

- To: Michael Meranze, Chair Academic Senate
- From: Kathryn Atchison, Chair Committee on Continuing & Community Education

Re: Proposed Presidential Copyright Ownership Policy Revisions

Dear Professor Meranze,

The Committee on Continuing and Community Education was asked to review the Proposed Presidential Copyright Policy Revisions. The proposal was sent to members electronically for feedback and the following points were raised;

The Proposed Presidential Copyright Ownership Policy appears to be straightforward and members felt the revisions were necessary after not being updated for many years and is clearly written. CCCE is in agreement with the three areas of concern identified by the College FEC, and believe they are important issues. Particularly, the issue raised by the Committee on Academic Freedom, "The policy does not address op-eds, blog posts, or other creations that <u>serve to popularize content rather than as research</u> or scholarship."

Additionally, policy Section III. A. 3. states copyrightable works created by students are owned by the University when such works are;

- 1. "Created primarily in the course or scope of the student's UC employment". This circumstance is ambiguous and it is not clear what works are included by this statement, i.e. a database created by a student employee to understand and manage laboratory equipment within a School or Division, an advertisement for a University show that goes viral. Although this circumstance is again listed in the FAQ section under "How does this revised Copyright Ownership Policy affect students?" and it is specified not to include theses and dissertations, it would benefit by the inclusion of other examples talented students could create as employees.
- 2. Bringing's up another concern raised by the College FEC, if a work is completed for a class with a community partner (potentially service learning), it could be specified here that such work is owned by the community partner, not the University, even though such work could be said to have been created primarily in the course of the students employment.
- 3. The FAQ should clarify whether graduate and postdoctoral students are considered Academic Authors. The committee believes this will help answer the question raised by the Undergraduate

Council, "As only some academic personnel will be granted copyright for certain works—do postdoctoral scholars and graduate students fall into this category, or have their copyrights been negotiated separately with their collective bargaining unit?"

4. For CCCE, Section III. A. 3. causes the greatest question and concern and should either be amended and clarified or specific examples should be given in the FAQ. For example, it is common within classes at the University for course chairs to require students to submit papers to be submitted for credit in a class to be reviewed and 'checked for plagiarism'. Once submitted, the company that owns the database uses the work presented by the student in all future plagiarism checks. It would be useful for the FAQ to present this as a case and to clarify ownership and usage for the faculty and students.

As a committee, we thank you for the opportunity to comment on the proposed revisions. If you have any questions, please do not hesitate to contact me <u>katchison@dentistry.ucla.edu</u> or the Committee Analyst, Renee Rouzan-Kay at <u>rrouzankay@senate.ucla.edu</u>.

Sincerely, Kathryn Atchison, Chair Committee on Continuing & Community Education

Cc: Shane White, Academic Senate, Vice Chair/ Chair- Elect Joseph Bristow, Academic Senate, Immediate Past Chair April de Stefano, Academic Senate, Executive Director Members of the Committee on Continuing and Community Education November 19, 2019

To: Michael Meranze, Chair UCLA Academic Senate

From: Moira Inkelas, Chair More Inhelas Academic Freedom Committee

Re: **Committee on Academic Freedom Comments on Proposed Revisions to Systemwide Copyright Policy**

The Committee on Academic Freedom members discussed this policy and the proposed revisions during two their two Fall quarter committee meetings, October 22, 2019 and November 19, 2019. In general, Committee members agreed that a revision of this policy was in order, especially as the last substantial revision was in 1992, 22 years ago. Increasingly, commercializing content created with University resources can be an important funding source for the University's mission. Therefore, it is important to have a clear policy to clarify copyright interests. To that end, members appreciated that the proposed revisions clarify the important right of faculty to retain the right to use and adapt work created with their own "independent academic effort."

Committee members welcomed the addition of software to the list of "Scholarly and Aesthetic Works," but felt that there were important omissions in this list. For example, the list does not mention online content or courses-both increasingly prominent areas of academic effort. The policy does not address op-eds, blog posts, or other creations that serve to popularize content rather than as research or scholarship. The policy also does not address data sets, to the extent that they are copyrighted or not subject to a non-disclosure agreement. Musical compositions and recordings are included in the list, but not other layers of artistic production such as performances, distribution, and streaming. Each of these forums for creating content should be addressed, minimally in the "Frequently Asked Questions" section of the policy.

The Committee suggests that the following clarification should be included at the end of III.A.1, which discusses the copyright ownership of "Scholarly and Aesthetic Works,": However, the University does grant the creators perpetual unlimited nonexclusive right to use works created with "independent academic effort." The Committee would also like more clarity about the right to profit off works created with "independent academic effort." For example, if an academic creates educational materials, the University can use these and profit, but can the individual adapt their own work and profit as well? The policy should also clarify what happens to the content of online content, especially courses, after a course ends and after a faculty member leaves the University.

Lastly, the policy could benefit from an expanded explanation of what is deemed to be use of University resources ("Significant University Resources") "University property" is a broad stroke. What is "regular salary"? Does this imply that other forms of salary might be considered Significant University Resources? For example, would students using University recording studios be subject to have that use be deemed as a significant use of resources? Though the terms "sponsored work" and "sponsor" are used, somewhere should clarify that this includes government grants.

On behalf of Academic Freedom Committee Members: Mayumi Prins; Eugene Volokh; Cesar Ayala; Mark Kligman; Jean-François Blanchette; Gaurav N. Sant Academic Freedom Committee Student Representatives: Phillip Edwards, GSA Representative; Judy Chon, USAC Representative; Yatin Kumar, USAC Representative November 12, 2019

Professor Michael Meranze Chair, UCLA Academic Senate

Re: Feedback on Revised Copyright Ownership Policy

Dear Chair Meranze,

The Faculty Welfare Committee reviewed the Proposed Presidential Copyright Ownership Policy at the November 12 meeting. Committee members found the revised policy to be straightforward and have no additional comments. We thank you for the opportunity to respond to this policy.

Sincerely,

Tzung Hsiai Chair, Committee on Faculty Welfare

cc: Members of the Committee on Faculty Welfare Annie Speights, Committee Analyst, Committee on Faculty Welfare November 14, 2019

Michael Meranze Chair, UCLA Academic Senate

Re: Systemwide Senate Review: Proposed Revised Presidential Policy on Copyright Ownership

Dear Professor Meranze,

At its meeting on November 13, 2019, the Council on Research (COR) reviewed the Proposed Revisions to the Presidential Policy on Copyright Ownership. Members agreed with the proposed revisions to the policy, which further defines 'academic author' and expands the pool of those eligible to own. A few members expressed that internal (central) funding mechanisms such as Senate research grants, should not count as significant resources.

If you have any questions for us, please do not hesitate to contact me at <u>desjardins@ucla.edu</u> or via the Council's analyst, Elizabeth Feller, at <u>efeller@senate.ucla.edu</u> or x62470.

Sincerely,

Richal Digadas

Richard Desjardins, Chair Council on Research

cc: Joseph Bristow, Immediate Past Chair, Academic Senate April de Stefano, Executive Director, Academic Senate Elizabeth Feller, Principal Analyst, Council on Research Shane White, Vice Chair/Chair-Elect, Academic Senate Members of the Council on Research

Undergraduate Council

UCLA Academic Senate

November 14, 2019

TO: Michael Meranze Chair, UCLA Academic Senate

RE: Proposed Presidential Copyright Ownership Policy Revisions

Dear Michael,

Thank you for providing the Undergraduate Council with the opportunity to opine on the Proposed Presidential Copyright Ownership Policy Revisions. Members appreciate the proposed revisions, which believe are long overdue. However, there are some aspects of the proposal which they believe would benefit from clarification and/or expansion.

The phrase Significant University Resources (SURs) needs clarification. As written, SURs are anything other than the, "usual support provided by the University and generally available to similarly-situated Academic Authors [which] includes customary administrative support, library facilities, office space, personal computers, access to computers and networks, and regular salary." How is institutional support in the form of grants (such as Faculty Research Grants) considered? As such grants are competitive, one could argue they are not generally available resources. Furthermore, it could be claimed that any grant above the average amount dispersed that year could be considered "in excess of those resources generally available to similarly situated employees." Could the university assert that they own the copyright for any research conducted or experiment supported by such a grant? If so, and faculty were to challenge such an assertion, what body would adjudicate the challenge?

Many departments have unique non-monetary sources of support, such as the Psychology Subject Pool. For the sake of the policy, would the pool of "similarly situated employees" be faculty in the Department of Psychology, faculty in all departments that conduct research on human subjects, or all faculty? Would such support be considered a SUR that is not available to all faculty? Would it be considered a departmental resource? For that sake of this policy, are the department and the University different entities? If so, what are the copyright implications?

Section IV (B) states that certain projects or University Facilities may have special copyright obligations. What University Facilities might be designated as having special copyright obligations; what are the criteria for making such a determination?

It may be useful for the section of course materials to include specific examples of materials (i.e. syllabi, quizzes, exams, presentations, etc.).

Postdoctoral scholars and graduate students are not specifically mentioned in the proposal. The policy seems to indicate that postdoctoral scholars and graduate students would be classified under the broad umbrella of university employees. However, the policy states that, "given the academic tradition of granting copyright ownership to some academic personnel for certain works, the University hereby transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort." As only *some* academic personnel will be granted copyright for certain works—do postdoctoral scholars and graduate

students fall into this category, or have their copyrights been negotiated separately with their collective bargaining unit?

Finally, while not mentioned specifically in this policy, our members believe that greater university resources should be provided to assist faculty in ensuring that their copyrights are honored—especially for course materials. Course materials are increasingly being published online by third party vendors who charge students to access them. While it is a violation of our Student Code of Conduct for students to publish or share course materials without the consent of the instructor, it is unrealistic to expect our instructors and graduate students to constantly survey a plethora of websites to ensure their materials are not posted. The university should provide resources and assist faculty in monitoring these sites and requesting that UC course materials are removed.

Sincerely,

Adriana Galvan Chair, Undergraduate Council

CC: Eric Wells, Undergraduate Council Analyst

UCLA MEMORANDUM

FACULTY EXECUTIVE COMMITTEE College of Letters and Science

A265 Murphy Hall Box 951571 Los Angeles, California 90095

Re:	College FEC Response to Revised Presidential Policy on Copyright Ownership
Date:	November 7, 2019
Fr:	Jeffrey B. Lewis, Chair, College Faculty Executive Committee
То:	Michael Meranze, Chair, Academic Senate

The College Faculty Executive Committee (FEC) appreciates the opportunity to comment on the proposed revisions to the Presidential Policy on Copyright Ownership. We were joined by Professor Eugene Volokh from the Law School who in response to questions from the members helped to clarify the major points of this policy.

Three areas of concern were identified:

- The definition of Scholarly and Aesthetic Works is to include works in terms of research and teaching activities of employees and creates substantial ambiguity about writings such as Op Eds, articles for popular media outlets, and blogs. These writings would not count as scholarly research (or teaching) in the context of academic personnel action and it is not clear if they would here. While such writing might be understood to constitute university service, service is not included as a category of activity for which the employees hold the copyright. We suggest that a better definition might set forth the conditions under which the university retains the copyright than setting forth the conditions under which it does not.
- Based on concerns raised by some members regarding the copyright of online courses possibly posing an impediment to adapting material used in the class for future teaching endeavors, it was recommended that copyright of online course material grant professors nonexclusive right to adapt the course for future teaching endeavors.
- Experiential learning is an area of pedagogical and curricular growth. It would be very helpful if the copyright policy allowed copyrights to be assigned to community partners for works produced as part of classes in which students participate in real-world projects for government, union, non-profit, or business organizations. While we understand that the proposed policy anticipates that work commissioned or contracted with the university can have copyright ownership assigned by agreement, we are concerned that the need for such formal legal agreements to be drafted on an ad hoc basis may discourage community partners from participating in experiential learning programs to the detriment of our students.

As always, our membership appreciates the consultative process and welcomes the opportunity to participate in the discussion of important matters like this. You are welcome to contact me at <u>jblewis@ucla.edu</u> with questions. Leigh Harris, Director of Curricular Initiatives, is also available to assist you and she can be reached at (310) 794-5665 or <u>lharris@college.ucla.edu</u>.

cc: Lucy Blackmar, Assistant Vice Provost, Undergraduate Education Initiatives April de Stefano, Executive Director, Academic Senate Valeria Dimas, Executive Assistant, Academic Senate Eugene Volokh, Distinguished Professor of Law Eric Wells, Committee Analyst, Undergraduate Council

Attachment: Proposal



November 6, 2019

To: Michael Meranze, Chair Academic Senate

From: Derjung "Mimi" Tarn, Chair Committee on Library and Scholarly Communication

Re: Response to Proposed Presidential Copyright Ownership Policy Revisions

Dear Professor Meranze,

As requested, the Academic Senate Committee on Library and Scholarly Communication (COLASC), discussed the proposed revisions regarding the "Systemwide Proposed Presidential Copyright Ownership Policy Revisions." After review of the proposal the following comments and questions were raised by the committee.

Overall the committee is in agreement with the proposed changes and the thrust of the policy. The policy appears to be more lenient then the previous policy and addresses new practices as it relates to the use of software.

However, the committee would like to know who takes responsibility for copyright violations when the University owns the copyright? Issues around responsibility for copyright violations were not addressed in the policy.

We thank you for the opportunity to comment on this proposal. If you have any questions, please do not hesitate to contact me at <u>DTarn@mednet.ucla.edu</u> or the Committee analyst, Renee Rouzan-Kay at <u>rrouzankay@senate.ucla.edu</u>.

Sincerely,

Derjung "Mimi" Tarn, Chair Committee on Library and Scholarly Communication

Cc: Shane White, Academic Senate, Vice Chair/ Chair-Elect Joseph Bristow, Academic Senate, Immediate Past Chair April de Stefano, Academic Senate, Executive Director



November 6, 2019

To: Michael Meranze, Chair Academic Senate

From: Jesse Clark, Chair Committee on International Education

Re: Proposed Presidential Copyright Ownership Policy Revisions

Dear Professor Meranze,

The Committee on International Education reviewed the Proposed Presidential Copyright Policy Revisions during its meeting on October 23, 2019. After the discussion of the revisions the committee raised the following;

The proposal appears to restrict academic autonomy, making the integrity of the academic process vulnerable to externalities. This shift in policy would be contrary to the culture of the humanities and social sciences and further complicate issues of intellectual property ownership in science and engineering fields. Is the reason for the reform to the copyright policy being propelled locally and by the Office of the President, given the desire to develop more online learning courses? What is the reason for the proposed shift? Is the University seeking to gain profits? It is unclear as to why these reforms are needed and appear to curtail the intellectual rights of professors. Will the copyrights equate to patents?

Has legal counsel of our copyright lawyer, such as Sharon Farb, Associate University Librarian, in the Young Research Library been consulted on the proposed change in policy? There is a concern that this may make productive faculty think twice before taking a job at UCLA, making UCLA an outlier to top research universities.

As scholars and members of the Academic Senate, we must exercise our shared governance. Our own creativity cannot be subject to the wishes of our employer, either factual or potential. As a committee we thank you for the opportunity to comment on the proposed revisions. If you have any questions, please do not hesitate to contact me <u>ilclark@mednet.ucla.edu</u> or the Committee Analyst, Renee Rouzan-Kay at <u>rrouzankay@senate.ucla.edu</u>.

Sincerely, Jesse Clark, Chair Committee on International Education

Cc: Shane White, Academic Senate, Vice Chair/ Chair- Elect Joseph Bristow, Academic Senate, Immediate Past Chair April de Stefano, Academic Senate, Executive Director Members of the Committee on International Education

UCLA Graduate Council

November 8, 2019

To: Michael Meranze, Chair Academic Senate

From: Andrea Kasko, Chair Graduate Council

Re: Proposed Presidential Copyright Ownership Policy Revisions

At its meeting on November 1, 2019, the Graduate Council reviewed and discussed the Proposed Presidential Copyright Ownership Policy Revisions. Council members applaud efforts made by the proposers to expand the definitions and examples of Categories of Works. Council members were supportive of the inclusion of course materials as an example of scholarly and aesthetic works, especially in light of the expansion of online instruction.

Members articulated that there is some confusion with respect to copyright ownership when third party vendors are involved in course development and delivery. Members would encourage proposers to address this issue in the proposed policy.

The Council would also encourage the proposers to clarify the definition of "other books" in the examples listed of scholarly and aesthetic works as well as include "plays" in the same list of examples.

Thank you for the opportunity to review and comment.



- Date: November 5, 2019
- To: Eric Wells, UCLA Academic Senate Committee Analyst
- From: Laura Wray-Lake, Chair, Luskin School of Public Affairs Faculty Executive Council
- RE: Feedback on Revised Copyright Policy

The Luskin School of Public Affairs FEC met and discussed the revised copyright policy on October 31, 2019. We generally found the revised policy to be clearer and more straightforward than the previous policy.

We only had one recommendation: The policy should explicitly articulate that copyright conversations between the university and authors should routinely be held in advance of major products being developed. A clear agreement should be established between the university and any author relying on significant university resources or sponsored research as early as possible in the process.

We commend those who worked to streamline and clarify the copyright policy.



November 5, 2019

- To: Michael Meranze, Chair Academic Senate
- From: James Bisley, Chair Committee on Teaching

Re: Proposed Presidential Copyright Ownership Policy Revisions

The Committee on Teaching discussed the Proposed Presidential Copyright Ownership Policy Revisions, during its meeting on October 30, 2019. The committee supports the revisions to the proposal and does not wish to opine. FYI.

Best,

Eric

Eric Wells, Ph.D. UCLA | Academic Senate Committee Analyst 3125 Murphy Hall | Box 951408 Los Angeles, CA 90095 310.825.1194 www.senate.ucla.edu

From: Pouratian, Nader <NPouratian@mednet.ucla.edu>
Sent: Monday, October 14, 2019 9:22 AM
To: Wells, Eric <ewells@senate.ucla.edu>
Cc: Ruan, Michael A. <mruan@mednet.ucla.edu>
Subject: RE: Proposed Revised Presidential Copyright Ownership Policy

Dear Eric,

The DGSOM FEC has reviewed this policy and has no additional comments. Thank you for the opportunity to review. Nader Pouratian, MD PhD DGSOM FEC Chair

From: Avidan, Alon M.D., M.P.H <<u>Avidan@mednet.ucla.edu</u>>
Sent: Monday, September 23, 2019 7:43 PM
To: Wells, Eric <<u>ewells@senate.ucla.edu</u>>
Cc: Pouratian, Nader <<u>NPouratian@mednet.ucla.edu</u>>; Ruan, Michael <<u>MRuan@mednet.ucla.edu</u>>
Subject: Re: Proposed Revised Presidential Copyright Ownership Policy

Thanks for forwarding Eric. I am also copying Dr. Nader Pouratian <u>NPouratian@mednet.ucla.edu</u> incoming School of Medicine FEC Chair. He will be assuming leadership for our FEC on October 1st, through September 2021. Sincerely, Alon

Alon Y. Avidan MD, MPH

Professor, UCLA Department of Neurology Director, UCLA Sleep Disorders Center Chair, Faculty Executive Committee David Geffen School of Medicine at UCLA E-mail: avidan@mednet.ucla.edu

On Sep 23, 2019, at 1:34 PM, Wells, Eric <<u>ewells@senate.ucla.edu</u>> wrote:

Dear UCLA Faculty Executive Committee Chairs:

On behalf of the Academic Senate Chair, Michael Meranze, please see the attached memorandum requesting your feedback on a Proposed Revised Presidential Copyright Ownership Policy.

If you have any questions or concerns, please do not hesitate to contact me or Chair Meranze.

Sincerely,

Eric Wells, Ph.D. UCLA | Academic Senate Committee Analyst 3125 Murphy Hall | Box 951408 Los Angeles, CA 90095 310.825.1194 www.senate.ucla.edu

<Revised Presidential Copyright Ownership Policy Meranze to FEC Chairs.pdf>

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OFFICE OF THE ACADEMIC SENATE TOM HANSFORD, CHAIR senatechair@ucmerced.edu

NOVEMBER 26, 2019

KUM-KUM BHAVNANI, CHAIR, ACADEMIC COUNCIL

RE: REVISED PRESIDENTAL POLICY ON COPYRIGHT OWNERSHIP

Dear Kum-Kum:

The proposed revised *Presidential Policy on Copyright Ownership* was distributed for comment to the Committee on Research (CoR), the Committee on Faculty Welfare and Academic Freedom (FWAF), Graduate Council, the Library and Scholarly Communications Committee (LASC), Undergraduate Council, and the school executive committees. CoR, GC, UGC, LASC, and two school executive committees opined or otherwise endorsed the policy.

At its November 13 meeting, Divisional Council (DivCo) discussed committee comments. Like committees, DivCo supports the revised policy. Members also highlight for consideration the following suggestions made by committees.

- In Section II Definitions, provide examples of Academic Authors to clarify who is an Academic Author and who is not. Members, for example, wondered if University Librarians would be considered Academic Authors under this policy.
- In Section III A.3. Student Works, clarify what constitutes "unusual circumstances" with respect to the statement "For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstances, copyright ownership of theses or dissertations authored by University students resides with such students."
- Clarify definitions so that faculty understand the policy implications of various funding sources, including, for example, research account funds derived from startups and grant monies from the Academic Senate research grant program.
- Consider developing a workflow/decision guide to help faculty and students navigate and comply with this policy as it relates to other relevant policies, like the patent and open access policies, and topics like intellectual property.

The Merced Division thanks you for the opportunity to opine.

Sincerely,

- M

Tom Hansford Chair, Divisional Council

CC: Divisional Council Maria DePrano, Chair, LASC Hilary Baxter, Executive Director, Systemwide Academic Senate Laura Martin, Executive Director, Merced Senate Office

Encl (4)

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ACADEMIC SENATE, MERCED DIVISION GRADUATE COUNCIL LEROY WESTERLING, CHAIR lwesterling@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-6312

OCTOBER 28, 2019

TO: TOM HANSFORD, CHAIR, DIVISIONAL COUNCIL

FROM: LEROY WESTERLING, CHAIR, GRADUATE COUNCIL

RE: GC ENDORSEMENT- PROPOSED REVISED PRESIDENTIAL POLICY ON COPYRIGHT OWNERSHIP

At its meeting on October 23, the Graduate Council unanimously endorsed the proposed revised Presidential Policy on Copyright Ownership. GC found particularly useful the revisions that clarify the conditions under which copyright is not returned to students (including graduate students).

Separately, GC noted there are a number of policies that intersect with faculty and student responsibilities, including the Copyright Policy, Patent Policy, and Open Access Policy. Members suggest that faculty and student compliance with these policies might be aided by a workflow/decision guide that helps faculty and students identify the appropriate considerations and in turn action(s).

Graduate Council appreciates the opportunity to opine.

CC: Graduate Council Senate Office

Enclosed (2)

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mscheibner@ucmerced.edu

COMMITTEE ON RESEARCH

November 5, 2019

MICHAEL SCHEIBNER, CHAIR

ACADEMIC SENATE, MERCED DIVISION

To: Tom Hansford, Chair, Division Council

From: Michael Scheibner, Chair, Committee on Research (COR)

Re: Revised Presidential Policy on Copyright Ownership

CoR reviewed the proposed revisions to the Presidential Policy on Copyright Ownership. In general, the committee supported the revised policy. However, we raise the below points.

Section II – Definitions states "Academic Authors means Employees who have a general obligation to create copyrightable scholarly or aesthetic works". CoR believes the policy would benefit from examples of Academic Authors in the UC system in order to clarify who is an Academic Author and who is not. For example, are University Librarians considered Academic Authors?

Section III A.3. – Student Works states "For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstances, copyright ownership of theses or dissertations authored by University students resides with such students." CoR requests clarification of what constitutes "unusual circumstances."

We appreciate the opportunity to opine.

cc: Senate Office

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ACADEMIC SENATE, MERCED DIVISION COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATIONS MARIA DEPRANO, CHAIR mdeprano@ucmerced.edu UNIVERSITY OF CALIFORNIA, MERCED 5200 NORTH LAKE ROAD MERCED, CA 95343 (209) 228-4369

November 22, 2019

- To: Tom Hansford, Senate Chair
- From: Maria DePrano, Chair, Committee on Library & Scholarly Communications (LASC)
- Re: Proposed Revised Presidential Policy on Copyright Ownership

LASC reviewed the proposed, revised Presidential Policy on Copyright Ownership. We offer comments below.

Under Section III. 3. Student Works, the policy states "Absent unusual circumstances, copyright ownership of theses or dissertations authored by registered students of the University resides with such students."

This is a somewhat complicated issue. In some research areas, students effectively work as research assistants in the context of a PI project (whether or not the project is explicitly funded by a sponsor) based upon the PI's ideas. The fundamental intellectual contribution is the PI's and the students often work on development, such as experiments, simulations, etc. Papers resulting from the project may be partly or entirely written by the PI. Could the policy add clarification regarding who owns the intellectual property of the research?

We appreciate the opportunity to opine.

cc: Senate Office

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SCHOOL OF SOCIAL SCIENCES, HUMANITIES AND ARTS

UNIVERSITY OF CALIFORNIA, MERCED 5200 N. LAKE ROAD BLDG A MERCED, CA 95343 (209) 228-7742 FAX (209) 228-4007

22 October 2019

To: Tom Hansford, Chair, Merced Division

From: Susan Amussen, Chair, SSHA Executive Committee

Re: SSHA EC comments on Proposed Presidential Policy on Copyright

The SSHA EC appreciates the opportunity to comment, and the clarification of the policy that this represents. We believe that the policy or the related FAQs still need clearer definitions. For instance, while we were fairly sure that funds in research accounts deriving from start up were exempt from this policy, we were unsure as to how Senate research grants would be handled. These things need to clear going forward.

Cc: SSHA Executive Committee

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CHAIR, ACADEMIC SENATE RIVERSIDE DIVISION UNIVERSITY OFFICE BUILDING, RM 225 DYLAN RODRIGUEZ PROFESSOR OF MEDIA & CULTURAL STUDIES RIVERSIDE, CA 92521-0217 TEL: (951) 827-6193 EMAIL: DYLAN.RODRIGUEZ@UCR.EDU

November 21, 2019

Kum-Kum Bhavnani, Chair, Academic Council 1111 Franklin Street, 12th Floor Oakland, CA 94607-5200

RE: Systemwide Review - Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum,

The UCR Division is pleased to provide feedback on the Proposed Revised Presidential Policy on Copyright Ownership. The Executive Council discussed the proposal and committee responses at its November 18, 2019 meeting and chose to affirm the existing the committee responses without further comment. During this discussion, the Faculty Welfare Chair requested to review and comment on the proposed revised policy, to which i agreed. The CFW response will be sent as an addendum to this response.

I bring your attention to the substantive responses from a two Senate standing committees and one faculty executive committee. Graduate Council recommends an expansion of the scope of work covered by copyright to include creative, aesthetic, and performance work, including forms of production and curation that may be associated with that work. The Committee on Academic Freedom takes issue with the peculiar use of the term "tradition" in the document, and strongly affirms that a revision of the policy clearly state that copyright ownership belongs to the faculty originator(s). CAF also wishes to add undergraduate students to the scope of the policy. Finally, the College of Natural and Agricultural Sciences Executive Committee suggests that this policy be reviewed at the departmental level due to the nuances of copyright across fields and disciplines.

Thank you for this opportunity to consult on an important and impactful matter that affects Senate faculty members.

Sincerely yours,

Dylan Rodríguez Professor of Media & Cultural Studies and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate Cherysa Cortez, Executive Director of UCR Academic Senate Office Dear Dylan:

I am writing regarding the Senate request for College/School Executive Committee comments on the "Proposed Revised Policy: Presidential Policy on Copyright Ownership" that you sent us.

As chair of the SPP Executive Committee, I wish to report that our committee does not have any comments on this document. Nevertheless, concern was raised that the extent of details in the document went beyond the expertise of ordinary faculty and thus necessitated review by individuals with appropriate expertise on the specific elements of this issue, including copyright and intellectual property policy/laws with respect to UC and in general.

Thank you very much.

Best, Richard Carpiano

Richard M. Carpiano, PhD, MPH Professor of Public Policy and Sociology Co-editor, *Journal of Health and Social Behavior* University of California, Riverside School of Public Policy 900 University Avenue Riverside, California 92521 USA

Office: 4157 Interdisciplinary South Phone: 951-827-5405 E-mail: richard.carpiano@ucr.edu Website: http://www.richardcarpiano.com Twitter: http://www.twitter.com/RMCarpiano



GRADUATE COUNCIL

October 25, 2019

To: Dylan Rodriguez, Chair Riverside Division

-Ajh

From: Jason Stajich, Chair Graduate Council

RE: [Systemwide Review] Proposed Revised Policy: Presidential Policy on Copyright Ownership

Graduate Council reviewed the Proposed Revised Presidential Policy on Copyright Ownership at their October 17, 2019 meeting and agrees that copyright should not be limited to the author (creator) of a particular work but may also include other forms of creative work, including performance, production, arrangement, etc. associated with that particular work. The Graduate Council feels the UC should recognize this broader scope of copyright in aesthetic work. Graduate Council suggests revising the FAQs for Copyright Ownership Policy so that the answer to the second question - "What kind of works are eligible for copyright ownership?" reads as follows:

Copyright protection is automatic for any "original work of authorship" created by a university author and "fixed in any tangible medium of expression." Examples include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recording, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium. In many cases related to aesthetic work, copyright extends into "related rights" where rights of creative work are not only (or not necessarily) connected with the work's original author; it includes the work of performers, producers, arrangers, and other associated creative work. Copyright does not protect facts or ideas. To learn more about copyright generally, visit the UC Copyright website at http://copyright.universityofcalifornia.edu/.

UCRIVERSITY OF CALIFORNIA Academic Senate COMMITTEE ON ACADEMIC FREEDOM

November 7, 2019

То:	Dylan Rodriguez, Chair Riverside Division of the Academic Senate
-	

From: Dmitri Maslov, Chair D. Maslow Committee on Academic Freedom (CAF)

Re: Proposed Revised Policy: Presidential Policy on Copyright Ownership

The Committee on Academic Freedom considered the proposed Revised Policy: Presidential Policy on Copyright Ownership submitted for Systemwide Review on September 19, 2019.

Of the immediate concern is the fact that although this document deals with the issues also addressed by the earlier proposal UCR Online Course Agreement (ILTI Agreement), the present document does not refer to earlier document and the two documents are not fully in line with each other. Most notably, these proposals differ with respect to which party (the faculty originator or the University) initially "owns" the copyright and how the rights can be transferred to from one party to another. Apparently, these inconsistencies are due to the fact that the Online Course Agreement document predates the Copyright Ownership document by several years. At the very least the two documents must be made consistent with each other or, perhaps, even merged into a single proposal.

Due to the overlap between the two documents the comments made by CAF in response to the Online Agreement proposal are also applicable to the Copyright Ownership proposal. These comments are not repeated here, and the interested party would be advised to refer to the aforementioned CAF response (submitted to Senate on November 5, 2019).

The copyright concept is an important part of the academic freedom. It is the CAF's opinion that the scholars have a legal and inalienable copyright to their work. However, the document (section III.A.1) states that the University "owns the copyright" and then, honoring the "tradition", transfers the copyright to academic workers. By appealing to "tradition" the document moves the discussion from the clear purview of law and into the domain of the paternalistic in which traditions may be breached without legal recourse. The CAF suggests that the reference to "tradition" be removed and that the university reaffirm clearly and unambiguously that the copyright ownership belongs to the faculty originator(s). The copyright then can be transferred partially or fully from the faculty owner to the University (and not the other way around as stated in the current version of the Copyright Ownership proposal) by the procedures which should be clearly outlined in the future revised Online Course Agreement (ILTI Agreement) document.

On the technical side, there is a comment concerning with Section III.A.3 which addresses Student Works. The CAF would like to see undergraduate students being specifically mentioned. The first sentence should read: "As between the University and its students, copyright ownership of works prepared by University students (including **both undergraduate and** graduate students) resides with such students..." (the change in boldface).

In summary, the Copyright Ownership has to be revised by 1) placing the original ownership of copyright with the faculty originator(s), and 2) defining procedures for copyright transfer from the originator to a second party.

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EXECUTIVE COMMITTEE: COLLEGE OF HUMANITIES, ARTS, AND SOCIAL SCIENCES

RIVERSIDE, CALIFORNIA 92521-0132

November 7, 2019

- TO: Dylan Rodriguez, Chair Academic Senate
- FROM: Lucille Chia, Chair CHASS Executive Committee
- RE: [Systemwide Review] Proposed Revised Policy: Presidential Policy on Copyright Ownership

The CHASS Executive Committee discussed the Proposed Revised Policy: Presidential Policy on Copyright Ownership at the regular meeting on October 02, 2019 and via email. The committee approves the revised policy. One minor point is that the new document is missing something like a clear "statement of purpose" of copyright, which seemed to be present on the old document (see page 17 out of 25 of the PDF document). It may be worth adding to the new document.

Lucille Chia, Chair CHASS Executive Committee

UCRIVERSITY OF CALIFORNIA Agricultural Sciences

Executive Committee

November 1, 2019

To:	Dylan Rodriguez, Chair Riverside Division
From:	Louis Santiago, Chair, Executive Committee College of Natural and Agricultural Science
Re:	Proposed Revised Policy: Presidential Policy on Copyright Ownership

The CNAS Executive Committee discussed the Proposed Revision to the Presidential Policy on Copyright Ownership at our meeting on September 27, 2019. The committee had substantial comments, but also expressed concern that they did not have the legal expertise to fully evaluate the document. There were questions as to exactly what constitutes "significant university resources" and what would be the implications on copyrights for the work of graduate students. There was also concern that this is passed through faculty meetings at the department level because copyright ownership is something that affects all academics.



PLANNING & BUDGET

October 29, 2019

To: Dylan Rodriguez, Chair Riverside Division

Harry WK Ton

From: Harry Tom, Chair Committee on Planning and Budget

Re: [Systemwide Review] Proposed Revised Policy: Presidential Policy on Copyright Ownership

The Committee on Planning & Budget (P&B) reviewed the proposed revised Presidential Policy on Copyright Ownership at their October 29, 2019 meeting. P&B felt that the policy seemed reasonable and did not have any major budgetary impacts.

UCRIVERSITY OF CALIFORNIA Academic Senate COMMITTEE ON ACADEMIC PERSONNEL

October 21, 2019

To:	Dylan Rodriguez
	Riverside Division Academic Senate
From:	Sherryl Vint, Chair Committee on Academic Personnel

Re: Proposed Revised Policy. Presidential Policy on Copyright Ownership

The Committee on Academic Personnel considered the proposed revisions to the Presidential Policy on Copyright Ownership and unanimously endorsed the revised policy without any substantial comments to add.

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ACADEMIC SENATE Santa Barbara Division 1233 Girvetz Hall Santa Barbara, CA 93106-3050

(805) 893-4511 http://www.senate.ucsb.edu Henning Bohn, Chair

December 11, 2019

To: Kum-Kum Bhavnani, Chair Academic Council

From: Henning Bohn, Chair Hunning Kohn Academic Senate

Re: Proposed Revised Presidential Policy on Copyright Ownership

The Santa Barbara Division delegated the review of the Revised Presidential Policy on Copyright Ownership to its Council on Faculty Welfare, Academic Freedom and Awards (CFW), Committee on Research Policy and Procedures, and Committee on Library, Information and Instructional Resources. CFW unanimously endorsed the proposed policy revision.

The Committee on Research Policy and Procedures (CRPP) agrees that the new policy is an improvement over the original version. The committee seeks clarification on the following points, concerning "sponsored works" and "university resources":

- The policy defines "sponsored works" as the ones created in the direct performance of a written agreement. It explicitly excludes publications (journal articles, books, lectures, etc.) based on the findings of the sponsored project, however it includes reports and software that are identified as "deliverables" of a project. Software code produced by a project is often intended to be shared with researchers at other institutions. Therefore, the policy should have procedures in place for when the university exerts ownership over code; at present it is not clear what the faculty creator should do to facilitate such sharing.
- The policy asserts university ownership of publications when "significant university resources" are used. This implies that all publications resulting from the Academic Senate's Faculty Research Grants will be copyrighted by the University. This seems different from the current practice for publications from such grants in which the PI retains ownership. If the policy does not intend to change the current practice, it needs further clarification of "significant university resources."

The Committee on Library, Information, and Instructional Resources (CLIIR) also finds the revised policy to be an improvement overall, but wished to forward the following questions/comments:

- How will issues of copyright be addressed if there is a dispute? The update appears to remove the author/creator from the discussion except as a potential recipient of Royalties. It seems he/she/they should be officially contacted in the decision process even if the university claims the copyright.
- The definition of "Significant University Resources" is problematic. The policy defines Significant University Resources as "University Resources beyond the usual support provided by the University and generally available to similarly situated Academic Authors." The examples provided stop short of including the Faculty Research Grants sponsored by the UCSB Academic Senate, which are available to all faculty on an application and review basis. Moreover, the Frequently Asked Questions section of the policy, addressing Significant University Resources, identifies "Funds administered by, or under the control, responsibility, or authority of the university," as being "likely ...deemed to constitute "Significant University Funds." This committee strongly opposes any revision in which the University would exert copyright ownership of every project that receives a Faculty Research Grant, the maximum of which is \$20,000.00 per project (many grants are for much less). The committee encourages further clarification of the parameters of "Significant University Resources" to make clear that these funds are excluded.
- It is recommended that all campuses establish or maintain a copyright office to assist with questions
 regarding academic use of copyrighted materials as well as ownership. Campuses vary in whether they
 have personnel dedicated to this field and faculty are not always certain where to obtain assistance in
 navigating the shifting copyright land

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1156 HIGH STREET SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate SANTA CRUZ DIVISION 125 CLARK KERR HALL (831) 459 - 2086

December 2, 2019

Kum-Kum Bhavnani, Chair Academic Council

RE: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum,

The Santa Cruz Division has reviewed and discussed the proposed revised Presidential Policy on Copyright Ownership. Our Committees on Academic Freedom (CAF), Academic Personnel (CAP), Faculty Welfare (CFW), Informational Technology (CIT), Library and Scholarly Communication (COLASC), Research (COR), and Teaching (COT) have responded. Through these committees responses, the Santa Cruz Division raises serious concerns with respect to the assumption in the proposed revised policy that copyright rests with the university; we seek further clarification on this point as well as several others, all discussed in more detail below.

CAF, CAP, and COT raise multiple concerns with the proposed changes to III.A.1 that imply that copyright is assumed to rest with the university and is transferred to the faculty member "by tradition." CAF is particularly concerned that transfer by "academic tradition" is "an inversion" of "longstanding legal precedent" and is a potential threat to academic freedom since it, essentially, allows for the University to "rescind their 'gentleman's agreement' and enforce their implied copyright ownership" at any point. COT echoes this concern, pointing out that with this change in language, "the university might claim the power to revoke the copyright from faculty by merely ending that 'tradition." CAP underscores the fact that "the proposed changes may represent a large change in policy, one that goes against not only again academic tradition but U.S. Title 17 and its associated case law." This contradicts AAUP documents that UC copyright law includes a "teacher exception." CAF is especially clear on this point, recommending that "the overall policy language better conform to legal precedent rather than assumed University magnanimity." In addition, CAF urges that the "teacher exemption" be explicitly defined so as to make clear (1) when a "work for hire" exception applies and (2) how "work for hire" restrictions affect those who do not have teaching duties. (Please see CAP and CAF's letters for their detailed responses.)

Each of the reviewing committees also raises concerns regarding the vague definition of "Significant University Resources" in the FAQ section. CIT, CFW, and COLASC remark that such ambiguity in the language might negatively affect the further development and creation of online courses that require a significant amount of resources, including FTE support from Learning Technologies and the Faculty Instructional Technology Center (FITC) at UC Santa Cruz, if faculty do not retain ownership of such

courses. The Division asks for this to be clarified and revised to better articulate the potential impact of the proposed revised policy on faculty and instructors developing online courses.

Finally, CAP and COT question the deletion of the initial statement of values at the beginning of the policy and advise the statement be retained.

As always, the Santa Cruz Division appreciates the opportunity to opine.

Sincerely,

Birbale A

Kimberly Lau, Chair Academic Senate, Santa Cruz Division

Encl. Senate Committee Bundled Responses

Cc: Jessica Taft, Chair, Committee on Academic Freedom Lynn Westerkamp, Chair, Committee on Academic Personnel Grant McGuire, Chair, Committee on Faculty Welfare Hamid Sadjadpour, Chair, Committee on Information Technology Jin Zhang, Chair, Committee on Library and Scholarly Communication Paul Roth, Chair, Committee on Research Maureen Callanan, Chair, Committee on Teaching Matthew Mednick, Director, Academic Senate

November 25, 2019

Kimberly Lau, Chair Academic Senate

Re: CAF's Response to Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

On Monday, Nov. 4, the Committee on Academic Freedom (CAF) discussed the draft of the revised Presidential Policy on Copyright Ownership. The committee supports the general expansion of eligible works that now fall under protected copyright, as well as the expanded definition of "Academic Authors" who are now eligible to own copyright. Faculty ownership of copyright is important for academic freedom, as it ensures not only the content of our scholarly and aesthetic work, but also how it is distributed.

However, CAF is concerned about the specific framing of those expansions and the ambiguity of language defining its parameters. The Policy Summary states that the "policy embodies the academic tradition of granting copyright ownership to certain university personnel for their scholarly and aesthetic works..." Here, and in section A.1, the policy gives the University the power to "grant" copyright to academic authors despite the long-standing legal precedent of the "teacher exemption" to the "work for hire model" that gives employers copyright ownership to works created by their employees. Under such precedent, academics hold and maintain the copyright to their own work without implicit or explicit grantorship by the University. This is upheld by law rather than "academic tradition." An inversion of that relationship is a potential threat to academic freedom if, at some point, the University decided to rescind their "gentleman's agreement" and enforce their implied copyright ownership.

CAF recommends that the "teaching exemption" be specifically stated, along with clarifications for how and when a "work for hire" exception applies, and that the overall policy language better conform to legal precedent rather than assumed University magnanimity. Further, as CAF is concerned with the academic freedom of all stakeholders in the university, not merely ladder faculty or those at the top of the hierarchy, we urge those shaping copyright policy to consider how "work for hire" restrictions affect those who do not have teaching duties. We would encourage an approach to copyright that takes an individuals' right to hold their copyright as a fundamental principle, regardless of their status in the university. Such a policy would be more supportive of academic freedom in our university system.

The Presidential Policy uses "significant university resources" as a metric for copyright ownership, but significant resources are defined as those that go "beyond the usual support provided by the University and generally available to similarly situated Academic Authors or, as applicable, students." With such wide variance in support across divisions, departments, labs, and even individual faculty, how is the baseline for "usual support" determined? And how are "similarly situated Academic Authors" defined? CAF is concerned that the ambiguity of language could later permit the University to exclude certain works or authors—especially those with less institutional

power—from rights to their copyright. CAF is concerned that this new policy therefore has the potential to open up academic authors to a weakening of their individual rights to hold their copyrights, which would be a grave threat to their academic freedom.

Sincerely,

Jessin K. Topt

Jessica Taft, Chair Committee on Academic Freedom

 cc: Lynn Westerkamp, Chair, Committee on Academic Personnel Grant McGuire, Chair, Committee on Faculty Welfare Hamid Sadjadpour, Chair, Committee on Information Technology Jin Zhang, Chair, Committee on Library and Scholarly Communication Paul Roth, Chair, Committee on Research Maureen Callanan, Chair, Committee on Teaching

October 10, 2019

Kimberly Lau, Chair Academic Senate

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

During its meeting of October 10, 2019, the Committee on Academic Personnel (CAP) reviewed the proposed revised Presidential Policy on Copyright Ownership. The committee had several concerns with the proposed revisions.

First, CAP members noted that in the proposed revisions the following statement is removed from the policy: "The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas." This seems like a clear statement of important values (e.g., creating knowledge, sharing it freely) that the university should want to endorse. We recommend that this statement be retained. If there is a cogent argument for why it is being proposed for removal, this should be articulated.

CAP members were also concerned that the proposed language appears to obscure important elements of U.S. copyright law. The proposed new language seems to suggest that copyright typically rests with the institution rather than with the faculty member. There is language concerning circumstances in which copyright would transfer back to the faculty member, but even with this language, the proposed changes may represent a large change in policy, one that goes against not only academic tradition but U.S. Title 17 and its associated case law.

Here is the key section of the proposed revision:

When the "work made for hire" provision in U.S. copyright law applies, the University owns the copyright for copyrightable works prepared by its employees acting within the scope of their employment. However, given the academic tradition of granting copyright ownership to some academic personnel for certain works, the University hereby transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort.

There are at least three (related) worries about this language:

(1) It is true that whenever the "work made for hire" provision applies, the University would own the copyright, rather than the faculty member. However, the "work made for hire" provision rarely applies to university faculty because of the long-standing "teacher exception" that has been recognized in Title 17 case law since 1929¹. This exception recognizes that faculty are dissimilar to corporate employees in numerous ways and removes faculty from the "work for hire" category of copyright ownership, except in unusual circumstances. Quoting from the decision in a 1969 case "University lectures are *sui generis*. Absent compulsion by statute or precedent, they should not be blindly thrown into the same legal hopper with valve designs."²

The existence of the teacher exception is extremely important for academic freedom. In its Statement on Copyright³, the American Association of University Professors (AAUP) described the serious problems that would arise if the teacher exception did not exist and the institution owned the copyright to faculty scholarship. The AAUP writes "Were the institution to own the copyright in [faculty scholarship] under a work-made-for-hire theory, it would have the power, for example, ... to censor and forbid dissemination of the work altogether" and continues "Such powers, so deeply inconsistent with fundamental principles of academic freedom, cannot rest with the institution."

CAP members agree with the AAUP statement and are concerned that the revised policy appears to misstate the default copyright ownership status for faculty members. It does so by mentioning "work for hire" but not the teacher exception, and by stating that [only] "some" academic personnel who have created "certain" works would be able to own the copyright. While technically accurate, this language is highly misleading and obscures the truth -- in nearly all circumstances, faculty are the original copyright owners and should retain that ownership.

(2) The statement does not articulate that it is long-established case law, not mere "academic tradition" that dictates this default status. This is important because laws

¹ Sherrill v. Grieves, 57 Wash. L. Rep 286 (D.C. 1929). Also see: Hays v. Sony Corp. of Am., 847 F.2d 412, 416–17 (7th Cir. 1988)

² Williams v. Weisser, 78 Cal. Rptr. 542 (Cal. Ct. App. 1969)

³ <u>https://www.aaup.org/report/statement-copyright</u>

provide additional protections, beyond those provided by tradition.

(3) Copyright must be transferred with a signed, written agreement. It is not possible to assert copyright transfer in policy, as is apparently the intent of the phrase "the University hereby transfers the copyrights it may own."⁴

Finally, CAP members wonder at the intent of the proposed changes. The two justifications provided in the FAQ are that the policy (last revised in 1992) "has been due for a revision for some time" and that there are "areas of concern and confusion" regarding non-patented software. Presumably it is this latter reason that is driving the policy change. Is the underlying intent for the University to be able to more easily claim ownership to faculty-created software? Is the potentially lucrative nature of these particular works of scholarship in any way relevant?

Whatever the answer to these questions, CAP members recommend further analysis of the proposed changes, ideally by Academic Senate members with expertise in copyright law, and a full discussion by the SEC. Such discussion should include a consideration of works created with external funding support, because both the revised and the current policy are unclear as to whether and why such works should be treated differently than works created without financial support from funders. It is our belief that the policy should strongly affirm faculty ownership of copyright to works that they create, and make it clear that exceptions to faculty ownership are rare, and typically will occur only with an express agreement that the work in question is "work made for hire." Because the proposed revisions appear to weaken the case for faculty ownership of works that they create, CAP is not currently in favor of these revisions.

Sincerely,

Westerko

Lynn Westerkamp, Chair Committee on Academic Personnel

⁴ Copyright Act, 17 U.S.C. §§ 101-810 (2006) (originally enacted as of Oct. 19, 1976, 90 Stat. 2541)

cc: Hamid Sadjadpour, Chair, CIT Grant McGuire, Chair, CFW Paul Roth, Chair, COR Maureen Callanan, Chair, COT Jessica Taft, Chair, CAF Jin Zhang, Chair, COLASC

October 17, 2019

Kimberly Lau, Chair Academic Senate

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

During its meeting of October 17, 2019, the Committee on Faculty Welfare (CFW) reviewed the proposed draft of the revised Presidential Policy on Copyright Ownership. CFW echoes concerns expressed by the Committee on Information Technology (CIT) regarding online course design. Members noted that the definition of "Significant University Resources" in section II of the proposed policy is overly broad, and does not at all clarify whether funding or central resources used to design such a course would fall under this definition. CFW notes that this could be a potential problem with the growing number of online courses, and recommends that this term and its possible relationship to online course design be clarified.

Thank you for the opportunity to provide feedback.

Sincerely, /s/ Grant McGuire, Chair Committee on Faculty Welfare

cc: Lynn Westerkamp, Chair, CAP Jessica Taft, Chair, CAF Hamid Sadjadpour, Chair, CIT Jin Zhang, Chair, COLASC Paul Roth, Chair, COR Maureen Callanan, Chair, COT

October 16, 2019

Kim Lau, Chair Academic Senate

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

During its meeting of October 16, 2019, the Committee on Information Technology (CIT) reviewed the proposed revised Presidential Policy on Copyright Ownership. CIT appreciates that the policy touches on some informational technology concerns such as software development, and overall, supports the proposed revisions to the policy. However, members noted that there is a need to address online course development with regards to university resources in the FAQs for Copyright Ownership Policy.

Members noted that the creation of online courses on the UCSC campus takes a significant amount of resources, including FTE support from Learning Technologies and the Faculty Instructional Technology Center (FITC). It is unclear in the proposed revised policy and the FAQ page, whether the utilization of these resources for online course design falls under the category of "Significant University Resources", which could affect copyright ownership. Members assume that this is not the case. However, as this is not entirely clear, CIT recommends that page 2 of the FAQs for Copyright Ownership Policy¹ be revised to specifically indicate whether or not utilization of these campus resources for course design are deemed to constitute "Significant University Resources".

Thank you for the opportunity to provide feedback on this important review.

Sincerely, /s/ Hamid Sadjadpour, Chair Committee on Information Technology

cc: Lynn Westerkamp, Chair, CAP Jessica Taft, Chair, CAF Grant McGuire, Chair, CFW

¹ FAQs for revised Copyright Ownership Policy, September 2019 draft

Jin Zhang, Chair, COLASC Paul Roth, Chair, COR Maureen Callanan, Chair, COT November 25, 2019

Kimberly Lau, Chair Academic Senate

RE: COLASC's Response to Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

The Committee on Library and Scholarly Communication (COLASC) reviewed the Presidential Policy on Copyright Ownership at its November 7th and 21st meetings.

One faculty member raised the issue that copyright originally resides with the creator/author/artist as soon as they "fix" their work in a tangible medium (e.g., in writing), and that language in the proposed policy implies that original copyright rests with the University. COLASC requests that this issue be clarified, and appropriate language adopted.

We echo the concerns raised by CFW and CIT regarding "significant university resources." This term is somewhat overly broad and ambiguous.

Sincerely,

Jin Zhong Zhang, Chair Committee on Library and Scholarly Communication

cc: Jessica Taft, Chair, Committee on Academic Freedom Lynn Westerkamp, Chair, Committee on Academic Personnel Grant McGuire, Chair, Committee on Faculty Welfare Hamid Sadjadpour, Chair, Committee on Information Technology Paul Roth, Chair, Committee on Research Maureen Callanan, Chair, Committee on Teaching

October 3, 2019

Kimberly Lau, Chair Academic Senate, Santa Cruz Division

Re: Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

During its meeting of October 1, 2019, the Committee on Research (COR) reviewed the proposed revisions to the Presidential Policy on Copyright Ownership. After a thorough discussion of the materials included in the packet, the committee found nothing to object to in the proposed changes. COR appreciates the opportunity to review and comment on policy changes related to research.

Sincerely, *lsl* Paul Roth, Chair Committee on Research

cc: Jessica Taft, Chair, Committee on Academic Freedom Lynn Westerkamp, Chair, Committee on Academic Personnel Hamid Sadjadpour, Chair, Committee on Information Technology Grant McGuire, Chair, Committee on Faculty Welfare Maureen Callanan, Chair, Committee on Teaching Jin Zhang, Chair, Committee on Library and Scholarly Communication

November 26, 2019

Kimberly Lau, Chair Academic Senate

Re: COT's Response to Systemwide Review of Proposed Revised Presidential Policy on Copyright Ownership

Dear Kim,

The Committee on Teaching (COT) discussed the proposed revised Presidential Policy on Copyright Ownership in our meetings on October 29th and November 11th. COT has several concerns about the proposed changes.

First, we have concerns about the proposed changes to the wording of III.A.1 which implies that the copyright generally rests with the university and is transferred to the faculty member "by tradition." Our understanding from AAUP documents is that US copyright law includes a "teacher exception" that recognizes copyright for scholarly and teaching materials as residing with the faculty as a matter of academic freedom. Changing the wording as proposed implies instead that the university owns the copyright and transfers it to the faculty member. This wording implies a change such that the university could claim the power to revoke the copyright from faculty by merely ending that "tradition."

We find this to be problematic for both academic work and for teaching materials created by faculty (which fall under COT's purview). Academic freedom requires that faculty hold the rights to their work and make the decisions about where and when to publish or share the products of that work. We recommend that the policy retain the original wording, which we understand to be aligned with copyright law:

"Ownership of copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator..." rather than changing the policy to say that the university "owns" the copyright and "transfers" it to the faculty member.

Second, we agree with CFW's concern about the vague language in the phrasing about the university owning copyright in cases where it provides "significant resources." More clarity is needed regarding what would count as significant resources. COT questions in particular how this would apply to such issues as faculty creation of online courses and course materials as part of their teaching.

Finally, we question the deletion of the initial statement of values at the beginning of the policy. What is the reason for dropping this clear statement that goes to the heart of academic freedom? We recommend careful reconsideration of this proposed policy change.

Sincerely,

War G. Call

Maureen Callanan, Chair Committee on Teaching

cc: Jessica Taft, Chair, Committee on Academic Freedom Lynn Westerkamp, Chair, Committee on Academic Personnel Grant McGuire, Chair, Committee on Faculty Welfare Hamid Sadjadpour, Chair, Committee on Information Technology Jin Zhang, Chair, Committee on Library and Scholarly Communication Paul Roth, Chair, Committee on Research

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November 13, 2019

Professor Kum-Kum Bhavnani Chair, Academic Senate University of California 1111 Franklin Street, 12th Floor Oakland, CA 94607

Re: Proposed Revisions to UC Presidential Policy on Copyright Ownership

Dear Professor Bhavnani:

The proposed revisions to the UC Presidential Policy on Copyright Ownership was discussed at the Divisional Senate Council meeting on November 4, 2019. Senate Council endorsed the Divisional Committee on Library's response which is attached.

Sincerely,

Maripat Corr, Chair San Diego Divisional Academic Senate

Enclosure

Cc: Steven Constable, Vice Chair, San Diego Divisional Academic Senate Ray Rodriguez, Director, San Diego Divisional Academic Senate Office Hilary Baxter, Executive Director, Systemwide Academic Senate October 21, 2019

MARIPAT CORR, CHAIR Academic Senate, San Diego Division

SUBJECT: Review of Proposed Revision to UC Presidential Policy on Copyright Ownership

The Library Committee has reviewed the *Proposed Revised Presidential Policy on Copyright* as presented by UC Provost Michael Brown on September 19, 2019. The Committee endorses the update of the policy and is generally positive with regard to updated language, particularly language to explicitly include students.

The Committee expressed concern related to some of the issues that may arise related to sponsored research, contracted facilities, and non-exclusive use agreements, but recognizes that detailing every process related to research support is outside the purview of this policy.

One concern expressed by the Committee is the vagueness in the definition of Significant University Resources. While the Committee acknowledges that the language presented is an improvement over previous policy, the Committee believes that a there should be a mechanism to help employees and students determine when they are on the threshold of using significant resources that could influence the assignment of copyright. Indeed, an alert system from the University to the participant, that they are approaching the threshold, would be welcome.

The Committee believes that including more detailed language related to the process for reporting and release of Copyright should be included in the policy, especially given that the policy delegates compliance authority to the individual Chancellors, Laboratory Directors and Vice Presidents. In addition, the policy should include a more comprehensive contact list for employees and students with questions, particularly those related to the use of Significant University Resources.

Sincerely,

John Hildebrand, Chair Library Committee

cc: C. Campbell S. Constable A. Montgomery R. Rodriguez



http://senate.ucsf.edu

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Sharmila Majumdar, PhD, Chair Steven Cheung, MD, Vice Chair Vineeta Singh, MD, Secretary Jae Woo Lee, MD, Parliamentarian

December 3, 2019

Kum-Kum Bhavnani, PhD Chair, Academic Council Systemwide Academic Senate University of California Office of the President 1111 Franklin St., 12th Floor Oakland, CA 94607-5200

Re: Proposed Revised Presidential Policy on Copyright Ownership

Dear Kum-Kum:

Our Graduate Council, Committee on Research (COR), and Committee on Library and Scholarly Communications (COLASC) reviewed and commented on the Proposed Revised Presidential Policy on Copyright Ownership.

- The Graduate Council requested clarity around copyright ownership of students employed with the University.
- COR endorsed the proposed revisions as they expand eligibility to own copyrights and types of work eligible for copyright ownership.
- COLASC noted that the proposed revisions do not include all types of creative endeavor and requested a broadened definition of a scholarly and artistic work.

Sincerely,

S. Majundar____

Sharmila Majumdar, MD, 2019-20 Chair UCSF Academic Senate

Cc: Lea Grinberg, MD, PhD Dyche Mullins, PhD Marta Margeta, MD, PhD

http://senate.ucsf.edu



November 22, 2019

Professor Sharmila Majumdar, PhD Chair, UCSF Academic Senate

RE: Systemwide Review of Proposed Modifications to the Presidential Policy on Copyright Ownership

Dear Chair Majumdar,

Graduate Council has reviewed and discussed the Proposed Modifications to the Presidential Policy on Copyright Ownership. We note that the revised policy addresses copyright ownership by graduate students.

In particular, the Policy provides:

"As between the University and its students, copyright ownership of works prepared by registered students (including registered graduate students) resides with the students, unless the work: (1) was created primarily in the course of a scope of the student's University employment..."

There are many different circumstances in which a student may be employed by the University. To avoid confusion about copyright ownership, we would like to see additional information in the text of the policy that clarifies specific instances when a student's employment with the University would impact copyright ownership.

Thank you for this opportunity to review the proposed modifications to this Policy.

Sincerely,

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Dyche Mullins, PhD Chair, Graduate Council UCSF Academic Senate 2019-2020

http://senate.ucsf.edu



November 22, 2019

Professor Sharmila Majumdar, PhD Chair, UCSF Academic Senate

RE: Systemwide Review of Proposed Modifications to the Presidential Policy on Copyright Ownership

Dear Chair Majumdar,

UCSF Senate Committee on Research (COR) appreciates this opportunity to comment on the proposed modifications to the Presidential Policy on Copyright Ownership. In particular, we want to extend our gratitude to the systemwide working group, convened in April 2013, for developing recommendations for this revised policy.

In light of the fact that the Presidential Policy on Copyright Ownership was last updated in 1992, we are interested to know whether University of California Office of the President intends to review the following related policies for potential revisions:

- 1. 2015 Policy on Copyright and Fair Use
- 2. 2005 Policy on Use of Recordings of Course Presentations
- 3. 2003 Policy on Ownership of Course Presentations
- 4. 1985 Policy for Off-Air Recording of Broadcast Programming for Educational Purposes

We strongly support the proposed modifications to the Presidential Policy on Copyright Ownership. In particular, we are in favor of an expansion of eligibility to own copyrights and of the pool of works eligible for copyright ownership.

Sincerely,

Lea Tenenholz Grinberg, MD, PhD Chair, Committee on Research UCSF Academic Senate 2019-2020



Committee on Library and Scholarly Communication Marta Margeta, MD, PhD, Chair

November 21, 2019

TO:	Sharmila Majumdar, Chair, UCSF Academic Senate
FROM:	Marta Margeta, MD, PhD, Chair, Committee on Library and Scholarly Communication (COLASC)
CC:	Todd Giedt, Executive Director, UCSF Academic Senate
RE:	Proposed Revised Presidential Copyright Ownership

Dear Chair Majumdar,

At its October 24, 2019 meeting, the Committee on Library and Scholarly Communication (COLASC) discussed the Proposed Revised Presidential Policy on Copyright Ownership. In reviewing the APM's draft language, COLASC agrees that the expansion to other forms of works, such as artistic works and software, is an important addition to this policy.

However, the committee has expressed concern that other types of creative endeavors undertaken by UC Academic Authors, such as development and dissemination of the new forms of practice by graduate students in nursing, do not seem to be recognized by the language used in the policy. The committee would like a broadened definition of a scholarly and artistic work to be considered.

Of note, the same concern applies to a related policy on "Open Access for Theses and Dissertations" that is currently undergoing the second system-wide review.

Finally, the committee would like additional examples of "Significant University Resources" to be provided in the FAQ attached to the policy.

Sincerely,

arts Marpta

Marta Margeta, MD, PhD Chair, 2019-2020